

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil No. 3:06cv00178

The Plaintiff, Rhonda C. Davis, hereby replies to Defendant Sterling and King, Inc.'s Response and Objections to Plaintiff's Motion to Plaintiff's Motion for Additional Time to Serve Process, as follows:

The Court should not dismiss the claims against the Defendant because the Plaintiff filed a motion to allow additional time prior to the expiration of the 120 day period follow the removal of the case and good cause exists to allow additional time. The Plaintiff has not been dilatory in serving process upon the Defendant. As set forth in her Memorandum of Law in Opposition to Sterling and King's Motion to Dismiss, the Plaintiff properly served the Defendant by Federal Express on April 24, 2006. While 28 U.S.C. §1448 expressly provides for the service of the process used by Plaintiff in this action, after the Defendant objected to the process served by Plaintiff, the Plaintiff caused new process to be issued within the 120 day period after removal and attempted service at the registered agent address of the Defendant as well as its business address provided to Trans Union. On the afternoon of August 11, 2006, when Plaintiff's counsel was informed by the Florida process server that the Defendant could not be located, the Plaintiff's counsel filed this Motion to Extend Time in accordance with Rule 4(m).

Even if the Court finds that the process served on the Defendant on April 24, 2006, was defective, good cause exists to grant additional time to the Plaintiff to serve the Defendant as the Plaintiff has been diligent in attempting service of process on the Defendant. This action was filed on March 10, 2006 in Mecklenburg County Superior Court and a summons was issued to the Defendant on that day. A copy of the summons is attached hereto. On March 15, 2006, the Plaintiff mailed a copy of the summons and complaint to the registered agent of the defendant at the address given by it to the Secretary of State of Florida. Notices were left with the registered agent by the post office on March 18, 2006, March 31, 2006 and April 10, 2006. A copy of the certified mail information is attached hereto. Despite being the registered agent for the Defendant, R. Keenen refused to claim the certified mailing and it was returned to the Plaintiff's counsel. After receiving notice that its registered agent would not claim the certified mailing, on April 21, 2006, Plaintiff's counsel proceeded with service of process upon the registered agent of the Defendant by Federal Express and obtained service of process April 24, 2006.

On August 1, 2006, the Defendant filed this Motion challenging the validity of the process served by the Defendant. On August 11, 2006, the Plaintiff obtained new process from this court delivered it to a process server in Florida. As shown on the attached affidavit, the process server was unable to locate the Defendant's business. Because the process server was unable to locate the Defendant on August 11, 2006, that same afternoon, the Plaintiff filed her motion for additional time in accordance with Rule 4(m). The following week the Plaintiff's counsel again had the Florida process server attempt service at the Defendant's given address without success. Contemporaneously therewith, on August 16, 2006, the Plaintiff also served the Defendant by Federal Express with the complaint and the summons issued by this Court as evidenced by the affidavit of service filed on September 1, 2006. On August 30, 2006,

Defendant's counsel acknowledged to Plaintiff's counsel Defendant's receipt of this service of process and stated that he had no objection to the manner of this service. If Defendant in fact does not contest the August 16, 2006, service of process by Federal Express, the only extension required would be an extension of five days. Otherwise, Plaintiff respectfully requests the extension as set forth in her motion.

WHEREFORE, the Plaintiff, Rhonda C. Davis, respectfully prays the Court that it grant the Plaintiff's Motion to Extend Time and for such other and further relief as the Court deems just and proper.

DATED this 5th day of September 2006.

/s/ John W. Taylor
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing PLAINTIFF'S REPLY TO DEFENDANT STERLING AND KING, INC.'S RESPONSE AND OBJECTION TO PLAINTIFF'S MOTION FOR ADDITIONAL TIME TO SERVE PROCESS entered and filed electronically on the 5th day of September, 2006 by the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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